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Attorneys for Fifth Third Mortgage Company

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re
SCHULTE PROPERTIES LLC,
Debtor.

Case No. 18-12734-mkn

Chapter 11

**SUPPLEMENTAL DECLARATION OF
GREG CAMPBELL IN SUPPORT OF
FIFTH THIRD MORTGAGE
COMPANY'S MOTION FOR
PROTECTIVE ORDER OR, IN THE
ALTERNATIVE, MOTION FOR
MODIFICAION OF SUBPOENA [DKT
NO. 863]**

I, Greg Campbell declare:

1. I am over the age of 18 and am employed as an Attorney by Aldridge Pite, LLP ("Aldridge Pite"), under the supervision of designated counsel, Eddie Jimenez, attorneys for Fifth Third Mortgage Company ("Fifth Third") in this proceeding. I have personal knowledge of the matters set forth in this declaration and, if called upon to testify, could and would competently testify thereto.

2 As part of my job responsibilities for Aldridge Pite, I have personal knowledge of and am familiar with the records maintained by Aldridge Pite in connection with this matter and

1 the procedures for creating those types of records. I have access to and have reviewed the books,
2 records, and files of Aldridge Pite that pertain to this matter.

3 3. The information in this declaration is taken from Aldridge Pite's business records
4 regarding this case. The records are: (a) made at or near the time of the occurrence of the matters
5 recorded by persons with personal knowledge of the information in the business record, or from
6 information transmitted by persons with personal knowledge; and (b) kept in the course of
7 Aldridge Pite's regularly conducted business activities. It is the regular practice of Aldridge Pite
8 to create and maintain such records.

9 4. Pursuant to Aldridge Pite's records, Debtor served *Requests for Production of*
10 *Documents* ("Discovery Requests") on Fifth Third.

11 5. On May 29, 2020, Aldridge Pite responded to the Discovery Requests on Fifth
12 Third's behalf with hundreds of pages of documents ("Discovery Responses"). Specifically,
13 Aldridge Pite provided Debtor with copies of the loan documents, filed claim, filed pleadings,
14 payment histories, monthly statements, escrow statements, and communications with the
15 borrower. However, Aldridge Pite objected to several requests as irrelevant, burdensome,
16 overbroad, vague, proprietary, confidential, or subject to privilege.

17 6. Debtor failed to meet and confer with Aldridge Pite regarding the Discovery
18 Responses, file a motion to compel seeking additional production, or request a ruling on Fifth
19 Third's objections to the Discovery Requests. In the meantime, the discovery period expired.

20 7. On or about May 28, 2021, the Debtor filed a *Notice of Issuance of Subpoena*
21 *Duces Tecum* ("Subpoena") requesting production of documents from twenty-seven (27) loan
22 servicers/creditors, including Fifth Third, related to the Debtor's dozens of real properties. The
23 Debtor now seeks blanket, identical, production of all documents at outlined in the Motion. (*See*
24 *Subpoena*, Exhibit 88).

25 8. Following the issuance of the Subpoena, Aldridge Pite sent a Meet & Confer letter
26 to the Debtor's counsel seeking to resolve the Subpoena and seeking clarification of any
27 discoverable documents the Debtor believed Fifth Third failed to produce. To date, Aldridge Pite
28 has yet to receive a substantive response from the Debtor's counsel.

1 9. On June 11, 2021, Aldridge Pite filed a *Motion for Protective Order or, in the*
2 *Alternative, Motion for Modification of Subpoena* (“Motion”). (Dkt No. 861). In the Motion Fifth
3 Third asserted:

- 4 • The Parties already engaged in extensive discovery, including production of documents,
5 following the hearing on approval of the Disclosure Statement in 2019. Specifically, Fifth
6 Third responded to Requests for Production of Documents, and provided Debtor with
7 hundreds of pages of documents at great time and expense. The Debtor now seeks
8 production of the **same documents**. As a result, Fifth Third asserted the documents Debtor
9 requested were either: (i) already produced by Fifth Third; (ii) equally available to the
10 Debtor; or (iii) objectionable as outlined in Fifth Third’s Responses to the original
11 production requests.
- 12 • To the extent Debtor was dissatisfied with Fifth Third’s Responses to the production
13 requests, Debtor failed to meet and confer regarding the Responses, file a motion to compel
14 seeking additional production, or request a ruling on Fifth Third’s objections to the
15 discovery requests. In the meantime, the discovery period expired.
- 16 • The documents requested are overbroad and unlimited in scope. Thus, the requests are
17 calculated to annoy, embarrass, or oppress Fifth Third. To comply with these requests
18 (again) would be an undue burden and expense on Fifth Third. To the extent the Court
19 determines additional document production is warranted, Fifth Third requested an order
20 modifying the scope of Subpoena as explained in the Motion.

21 10. On June 16, 2021, Aldridge Pite sent a **second follow up** letter to the Debtor’s
22 counsel seeking to resolve the Subpoena, and seeking clarification of any discoverable documents
23 the Debtor believed Fifth Third failed to produce. Further, Aldridge Pite requested the withdrawal
24 of the Subpoena.

25 11. On or about June 30, 2021, Debtor filed a *Limited Opposition to Motion for*
26 *Protective Order* (“Opposition”). (Dkt No. 870). In the Opposition, Debtor alleged: (i) Debtor is
27 not requesting documents already produced in this matter; (ii) Debtor is only requesting
28

1 documents, which have yet to be provided or are not accessible by the Debtor; and (iii) Debtor is
2 requesting documents to have a complete loan file to facilitate the filing of claim objections.

3 12. On July 1, 2021, Aldridge Pite sent a **third follow up** letter to the Debtor's counsel
4 seeking to resolve the Subpoena, and seeking clarification of any discoverable documents the
5 Debtor believed Fifth Third failed to produce. Further, Aldridge Pite requested the withdrawal of
6 the Subpoena. To date, Debtor has yet to provide Aldridge Pite with a substantive response. Nor
7 has the Debtor withdrawn the Subpoena.

8 13. On July 13, 2021, Aldridge Pite filed a *Reply to Debtor's Limited Opposition to*
9 *Motion for Protective Order* ("Reply"). (Dkt No. 877). In the Reply, Fifth Third asserted the
10 requested documents were already produced, equally available to the Debtor, or not in Fifth
11 Third's possession.

12 14. On July 28, 2021, the Court held an initial hearing on the Motion for Protective
13 Order. At the hearing, Debtor requested a continuance to review the documents produced by Fifth
14 Third.

15 15. On July 28, 2021, Aldridge Pite received a response from the Debtor stating:

16
17 "The proof of claim contains the note, deed of trust, and some orders from
18 Melani Schulte's prior bankruptcy. There is not a single statement or any
transaction history. Therefore we need the following:

19 Misty Morning – (1) monthly mortgage statements from January 2010
20 forward; (2) an escrow analysis from January 2010 forward (or at least from
21 the prior confirmation order that was entered on March 8, 2011 forward)
22 showing how payments were applied and at what interest rate. If Fifth Third
23 did not have the loan that far back, then we want the records from the
predecessor servicer that are in Fifth Third's possession. My understanding
is that Fifth Third has had the loan since at least 2009; (3) I also need copies
of the IRS Form 1098 issued by Fifth Third for the property from 2010 to
2020."

24 16. On July 29, 2021, Aldridge Pite sent a **fourth follow up** letter to Debtor's counsel
25 outlining the history of document production for the Subject Loan. Further, Aldridge Pite
26 informed the Debtor the monthly statements and payment histories were previously produced to
27 the Debtor (either through the discovery in 2020, the settlement conferences, or originally sent to
28 the Debtor through regular servicing). Accordingly, Aldridge Pite asserted the documents were

1 already in the Debtor's possession or equally available to the Debtor. In addition, Aldridge Pite
2 informed Debtor's counsel if Debtor is seeking documents from a prior servicer, Debtor may
3 serve discovery on said third parties.

4 17. On August 6, 2021, Aldridge Pite sent a **fifth follow up** letter to the Debtor's
5 counsel seeking to resolve the Subpoena. Specifically, Aldridge Pite requested the status of: (1)
6 the filing of the notice of withdrawal of the Subpoena; (2) Debtor's review of the documents
7 provided and summary of produced discovery; and (3) which discoverable documents (exactly)
8 Debtor alleged Fifth Third failed to produce.

9 18. On August 11, 2021, the Court held a **second hearing** on the Motion for Protective
10 Order. At the hearing, Debtor requested another continuance to review the documents produced
11 by Fifth Third.

12 19. On August 18, 2021, Aldridge Pite reproduced many of the documents pursuant
13 to the Debtor's request.

14 20. On August 18, 2021, Aldridge Pite sent a **sixth follow up** letter to the Debtor's
15 counsel seeking to resolve the Subpoena. With the recent production and prior production, Fifth
16 Third asserted it produced the requested documents in its possession (either through the 8/18/21
17 reproduction, discovery in 2020, the settlement conferences in 2020, or originally sent to the
18 Debtor through regular servicing). Upon Debtor's review of the documents provided thus far and
19 summary of produced discovery, Aldridge Pite requested clarification regarding which
20 discoverable documents (exactly) Debtor is still seeking from Fifth Third.

21 21. On September 1, 2021, Aldridge Pite sent a **seventh follow up** letter to the
22 Debtor's counsel seeking to resolve the Subpoena.

23 22. On September 15, 2021, the Court held a **third hearing** on the Motion for
24 Protective Order. At the hearing, Debtor requested another continuance to review the documents
25 produced by Fifth Third.

26 23. On September 22, 2021, Aldridge Pite received a response from the Debtor
27 regarding the production stating:
28

1. Mortgage Statements (Subpoena Item 5)

2010-2014 - I am missing all mortgage statements from January 2010 through December 2014.

2015 - I have all of statements for 2015

2016 - I have January through May 2016, as well as December 2016. I am missing June through November, 2016

2017 - I have January through June, 2017. I am missing July through December, 2017

2018 - I have no statements. I am missing January through December 2018

2019- I have no statements. I am missing January through December 2019

2020- I have no statements. I am missing January through December 2020

2021- I have no statements. I am missing January through current for 2021

2. Notes/Deeds of Trust (Subpoena Items 1-2, 8)

I have a note, deed of trust, and an assignment of deed of trust. I also have a family rider, and an assignment of deed of trust to Federal Home Loan Mortgage Corporation. Assuming there are no other documents related to paragraph 1 and 2 of the subpoena, which requests, "1. Note, promissory note, endorsements, allonges, riders, attachments, amendments and/or modifications. " and "2. The deed of trust or mortgage, with any and all endorsements, allonges, riders, attachments and/or amendments.", then we appear to have these items.

3. Statement of Accounts, accountings/etc. (Subpoena Items 3, 4, 6, 7)

I have an "Annual Escrow Disclosure" dated May 26, 2015. That is the only one of these I see. I am missing any others Fifth Third may have prepared I have inspection reports from Safeguard for 2016-2020. I do not have any others, so if there are others, they were not produced.

I have a loan history statement consisting of 36 pages, bates nos. 126-161. There are no other loan history statements.

There is a loan history payoff dated May 26, 2020, which is bates Nos. 0228-0229. There are no other loan histories.

4. Other documents requested by Subpoena (items 9, 10, 11, 12, and 13)

I do not have documents other than those above. If there is anything applicable, such as a loan history, documents relating to forced placed insurance, payment of taxes, insurance, etc., I will need that information.

Do you have a list of your bates numbered documents so that I may ensure that I have the same documents that you do? I would appreciate that.

Please let me know if you are willing to provide these missing documents, including any loan history and how payments were applied, payments for insurance and taxes, etc., please send those as well.

24. On September 22, 2021, Aldridge Pite sent an **eighth follow up** letter to the Debtor's counsel seeking to resolve the Subpoena. Specifically, Aldridge Pite again provided the Debtor with a catalog of the production. Aldridge Pite informed Debtor the above summary is inaccurate as Fifth Third previously produced many of the requested documents. Further, Aldridge

Pite re-attached the emails where our firm provided the documents to Debtor. In addition, Aldridge Pite produced additional monthly statements for 2018 - 2021.

25. On October 6, 2021, the Court held a **fourth hearing** on the Motion for Protective Order. At the hearing, the Court instructed counsel to file supplemental declarations in support of the Status Report.

26. On October 22, 2021, Aldridge Pite sent a **ninth follow up** letter to the Debtor's counsel seeking to resolve the Subpoena.

27. Below is a summary of the produced documents as provided to the Debtor's counsel:

Address	Servicing Start Date	Discovery Produced
5218 Misty Morning	Confirmation (4/2011) – Pre	- Statements produced 8/18/2021 -Statements, Pay Histories, Escrow Histories produced 5/29/2020 Claim with 410(A) history

28. With respect to the statements from 2011 – 2014, Aldridge Pite informed Debtor Fifth Third is unable to produce said documents as the documents are not in Fifth Third's possession. However, if the statements were sent to the Debtor, she should have access to the same. Further, Aldridge Pite informed Debtor the loan is de-escrowed. Payment histories have been produced as well. Upon Debtor's review of the documents provided, Aldridge Pite requested an updated list of the discoverable documents Debtor is still seeking from Fifth Third. To date, the Debtor has yet to provide a substantive response.

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/s/ Greg Campbell
GREG CAMPBELL
Attorneys for Fifth Third Mortgage Company

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

SCHULTE PROPERTIES LLC,

Debtor.

Bankruptcy Case No. 18-12734-mkn
Chapter 11

CERTIFICATE OF SERVICE

I, Lauren Timby declare that:

I am employed by Aldridge Pite, LLP. My business address is: 4375 Jutland Drive, Suite 200; P.O. Box 17933, San Diego, CA 92177-0933. I am over the age of eighteen years and not a party to this cause.

On October 27, 2021, I caused the **Supplemental Declaration of Greg Campbell in Support of Fifth Third Mortgage Company's Motion For Protective Order Or, In The Alternative, Motion For Modification Of Subpoena [Dkt No. 863]** to be served on the parties listed herein via electronic means through the Court's CM/ECF system or by placing a copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail, addressed as follows:

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1 //./

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10 /s/ Lauren Timby

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